

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
August 9, 2012

Meeting called to order at 6:04 p.m.

Board Members Present: Thomas Emerson, Rich Balano, David Kelly, Deborah Driscoll, Ann Grinnell

Members absent: Susan Tuveson, Robert Melanson, Rich Balano

Staff: Chris Di Matteo, Assistant Town Planner

Pledge to the Flag

Minutes: July 26, 2012

Mr. Kelly moved to accept the minutes of July 26, 2012 as submitted

Ms. Driscoll seconded

Motion carries unanimously by all members present

Public Comment:

Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

There was no public comment.

Mr. Emerson noted there were only four Board members present and asked if any applicant wished to postpone their review until a full contingent of members were present. There were none.

ITEM 1–10 thru 16 Jewett Lane - Minor Subdivision Plan.

Action: grant or deny approval. Brenda MacKenzie, owner and applicant, requests approval to create a subdivision to include four lots formerly part of a family subdivision located along Jewett Lane, in the Residential Rural Zone, Tax Map 29, Lots 20A, 20B1, 20C and 20D. Agent is Ken Markley, North Easterly Survey, Inc.

Ken Markley summarized the request for a minor subdivision approval. He summarized the design of the requested turnaround located at Lot B for emergency vehicles. The turnaround will be 20 feet wide and 40 feet in length. He responded to prior plan note requests, specifically the inclusion of a vegetation note along Jewett Lane and stormwater and erosion control. **Mr. Di Matteo** noted the Fire Chief has accepted the planned turnaround at Lot B. He requested an easement on behalf of the Town must be drafted, reviewed and recorded with the plan so emergency vehicles may use the easement. Additionally, it was requested that the use of the easement as the driveway access to the property be included on the plan. Mr. Markley agreed.

WHEREAS: Jewett Lane Subdivision – Beth L. MacKenzie, Owner, owner and applicant, proposes to create a subdivision to include four lots formerly part of a *family subdivision*, recorded July 12, 2006, Book 312, Page 29, located along Jewett Lane, in the Residential Rural Zone, Tax Map 29, Lots 20A, 20B1, 20C and 20D. Agent is Ken Markley, North Easterly Survey, Inc.

Hereinafter the “Development”.

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted; and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following (Hereinafter the “Plan”), prepared by Easterly Survey, Inc.

1. Recorded Division of Land Plan dated 10/27/2005. Latest Rev. 8/3/2006

Proposed Division of Land for Property at 10 Jewett Lane Tax Map 29 Lot 20A

2. Minor Subdivision Plan dated 6/4/2012

Jewett Lane Subdivision for Property at 10, 12, 14 & 16 Jewett Lane Tax Map 29, Lots 20A, 20B1, 20C and 20D

NOW THEREFORE, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by Section **16.10.8.3.4. and as recorded below:**

FINDINGS OF FACT

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| Action by the board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements: |
| A. Development Conforms to Local Ordinances. <i>The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.</i> |
| Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining |
| B. Freshwater Wetlands Identified. <i>All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.</i> |
| Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining |
| C. River, Stream or Brook Identified. <i>Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. §480-B, Subsection 9.</i> |
| Not Applicable |
| D. Water Supply Sufficient. <i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i> |
| Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining |
| E. Municipal Water Supply Available. <i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i> |
| Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining |
| F. Sewage Disposal Adequate. <i>The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</i> |
| Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining |
| G. Municipal Solid Waste Disposal Available. <i>The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.</i> |
| Not applicable |

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| H. Water Body Quality and Shoreline Protected. <i>Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.</i> |
| Not applicable |
| I. Groundwater Protected. <i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i> |
| Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining |
| J. Flood Areas Identified and Development Conditioned. <i>All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.</i> |
| Not applicable |
| K. Stormwater Managed. <i>Stormwater Managed. The proposed development will provide for adequate stormwater management</i> |
| Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining |
| L. Erosion Controlled. <i>The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.</i> |
| Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining |
| M. Traffic Managed. <i>The proposed development will:</i> <ol style="list-style-type: none">1. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and2. Provide adequate traffic circulation, both on-site and off-site. |
| Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining |
| N. Water and Air Pollution Minimized. <i>The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:</i> <ol style="list-style-type: none">1. Elevation of the land above sea level and its relation to the floodplains;2. Nature of soils and sub-soils and their ability to adequately support waste disposal;3. Slope of the land and its effect on effluents;4. Availability of streams for disposal of effluents;5. Applicable state and local health and water resource rules and regulations; and6. Safe transportation, disposal and storage of hazardous materials. |
| Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining |

O. Aesthetic, Cultural and Natural Values Protected.

The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

Vote of 4 in favor 0 against 0 abstaining

P. Developer Financially and Technically Capable.

Developer is financially and technically capable to meet the standards of this section.

Not applicable, no common, public infrastructure to construct, lots are already individually owned.

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby moves to grant **Final Approval** for the Development at the above referenced property, with waivers granted as noted and any conditions per Title 16.10.8.2.

Vote of 4 in favor 0 against 0 abstaining

Waivers:

- B. Scale from 1"=30 feet to 1"=40 feet
- L. Landscaping
- M. Natural and historical topography
- Q. Roadway drawings and street data
- R. Proposed lighting
- U. Existing contours
- V. Location and dimensions of sidewalks, curbs, etc.
- X. Copy of FIRM Map showing subdivision

Vote of 4 in favor 0 against 0 abstaining

Conditions:

1. Waivers and conditions as approved by the Planning Board must be included on the final plan prior to submittal for signature by the Chairman of the Planning Board.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. State law requires that any plans receiving waivers or variances be recorded at the York County Registry of Deeds within 90 days of the final approval. All subdivision plans must be recorded.
4. A turnaround easement drafted and recorded at the York County Registry of Deeds shall be submitted to the Town Planning Department with the recorded plan.
5. Prior to any earth moving or soil disturbance, one (1) mylar copy and two (2) paper copies of the recorded Plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department.

ACCORDINGLY, THE PLANNING BOARD HEREBY MOVES TO:

1. Approve the Findings of Fact,
2. Acknowledge their reading,
3. Incorporate them into the meeting minutes by reference,

4. Record their approval by the Planning Board members,
5. Approve the final Plan with the conditions of approval, and authorize the Planning Board Chairman to sign the final Plan upon confirmation by the Town Planner of final plan compliance.

APPROVED BY THE KITTERY PLANNING BOARD ON August 9, 2012

Vote of 4 in favor 0 against 0 abstaining

Notice to Applicant:

Section 16.6.2 Appeal of Planning Board, Board of Appeals, or Port Authority Decision.

A. An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

This approval by the Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Planning Board Findings of Fact, and any Conditions of Approval.

ITEM 2 – Beatrice Way Subdivision –Approved Subdivision Time Extension Request

Action: grant or deny request - Operation Blessing Limited Partnership, requests a second time extension for one year to complete the construction of a previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane. The site identified as Tax Map 61 Lot 08, consisting of ±3.2 acres situated in the Residential - Rural (R-RL) Zone.

Mr. Emerson stated a public hearing will be held to hear the neighbor's concerns and opinions, but no action will be taken due to the absence of a quorum. **Mr. Kelly** noted discussion on this item will continue, but no action will be taken as he must recuse himself as a resident of Highpoint Circle and there would be insufficient Board members present to entertain a vote. **Mr. Di Matteo** noted an email (attached) was submitted by a neighbor who could not attend.

Richard Sparkowich, representing Operation Blessing LP, explained an application was filed to extend the project approval by one year to complete final paving. One of three lots have been sold, but additional blasting is needed on the remaining lots and he needs to postpone the paving until this level of construction is completed to protect the final paving from damage. **Mr. Kelly** noted this is the second one-year extension request by the applicant. **Mr. Sparkowich** stated the remaining work from the first extension is expected to be completed by August 28, 2012. The culvert system requires adjustment and work with CMP required adjustment to the road edge. **Ms. Grinnell** asked what section is to be paved. **Mr. Sparkowich** stated it is the section from Kittree Lane to Highpoint Circle. **Ms. Grinnell** asked if this will provide a drive thru to Lewis Road. **Mr. Sparkowich** stated it would not as the road has been posted as a no drive-thru per the Fire Chief and prior Board approval. **Mr. Di Matteo** stated prior Board approval stated that Kittree Lane was to be a private way and not a public drive from Highpoint Circle, though physically connected.

Joe Gasparro, 11 Highpoint Circle, stated Kittree Lane is not paved from Highpoint Circle to Lewis Road; currently construction traffic travels down Lewis Road, to Norton Road and onto Highpoint Circle, rather than traveling down Kittree Lane (owned by Operation Blessing), disturbing the residential neighborhood of Highpoint Circle; the street signage is inadequate for emergency services where one road ends and another begins; home sites are incomplete and the remaining two lots will not be completed prior to the final paving as requested; the gate at the hammerhead prior to Kittree Lane should be removed and replaced with a permanent barrier to eliminate access to Highpoint Circle via Kittree Lane.

Melissa Morehead, 10 Highpointe Circle, noted the prior Board approval in 2008 conditioned completion of the project in three years. At the rate this development is progressing, completion would be in 2020. Additionally, the construction workers driving on Highpointe Circle are not adhering to the 25 mph limit. Why is Highpointe Circle being used for construction vehicles when Kittree Lane is owned by Operation Blessing. The damage to the granite curbs and sidewalks is evident. Will the Town be responsible for these types of damages?

Mary Jackson, 8 Highpointe Circle, concurred with Ms. Morehead and Mr. Gasparro. While she understands the need for the time extension, she is also concerned about the construction vehicles on their road, and requested that any damage to Highpointe Circle by construction vehicles be repaired by the developer.

Jen McCann, 12 Highpointe Circle, has lived on Highpointe Circle for five years. She was told the Operation Blessing project would be completed shortly and wonders how many more extensions will be granted. She also stated Highpointe Circle is used by logging trucks coming through the gate on Kittree Lane. She has also called police due to a fight between construction workers, including Mr. Sparkowich.

Darlene McIntyre, 24B Old Farm Road, requested access remain open to Kittree Lane as a second emergency exit as her child has a serious illness that may require emergency hospitalization. A permanent barrier would eliminate the turnaround by a fire truck

Melissa Morehead noted other subdivisions do not have secondary emergency egresses.

Joe Gasparro stated a fire truck could not get down Woods Road. Operation Blessing owns property at the end of Woods Road where they store vehicles to maintain their subdivision properties.

Dave Hansen, 14 Highpointe Circle, stated he is frustrated with the lack of progress and delay, noting activity by the developer speeds up prior to a Planning Board meeting, then slows down significantly following; concurred with others regarding safety on the road; he acknowledged he was involved in a heated discussion with Mr. Sparkowich; he asked if the signage is legally placed, noting based on its location he does not have legal access to his property.

Melissa Morehead noted in the July 24, 2008 minutes Carl Beal, engineer, stated that *...Operation Blessing would relinquish their rights to the Woods Road where it traverses part of the proposed lot. (8F)* If the Woods Road was to be relinquished why is it still being used?

There was no further testimony.

Ms. Grinnell asked why construction trucks are using Highpointe Circle and not Kittree Lane. **Mr. Kelly** verified prior testimony regarding the use of Highpointe Circle by construction vehicles. **Mr. Sparkowich** explained most of the trucking goes through Kittree Lane and he has records of very few utilizing Highpointe Circle. Mr. Kelly disagreed with this statement, from personal observation. Mr. Sparkowich stated prior approval required utilizing Highpointe Circle versus Kittree Lane for access to the construction site. Discussion continued regarding various means of access to the construction site other than via Highpointe Circle. **Ms. Driscoll** asked why the Town cannot place a sign on Highpointe Circle restricting construction vehicles. **Ms. Grinnell** asked how Mr. Sparkowich intended to access his remaining acreage if he developed the three lots off Kittree Lane. Mr. Sparkowich stated Tom Harmon advised him that he could access through the planned Highpointe Estates. In follow-up meetings with Goodhouse Construction, a portion of the right-of-way was deeded to Operation Blessing to access their property for the three-lot subdivision. Mr. Sparkowich noted the Board discussed this issue at the July 26, 2012 meeting when he asked for an extension of his approval. He noted he was not present at that meeting and asked what issues were discussed, other than his extension request. **Mr. Emerson** explained his request was brought to the Board by the Town Planner, and now the Board has additional questions regarding his project prior to making a final decision. Mr. Sparkowich recommended the speed limit on Highpointe Circle be reduced from 25 to 20 mph.

Mr. Kelly moved to continue this item to the August 23, 2012 Planning Board meeting in order to schedule a site walk.

Ms. Driscoll seconded

Motion carries unanimously by all members present

ITEM 3-York Hospital –Site Plan Amendment –Field Change-Minor Plan Amendment

Action: Review/Comment/Schedule a Site Walk. York Hospital requests approval to amend a previously approved site plan for their development to include construction of chiller units to the rear of the parking lot and associated landscape and other appurtenances. Property is located at 35 Walker Street at State Road in the Business Local 1 and Mixed Use Kittery Foreside Zones; Tax Map 4 Lot 168. Agent is Joseph Cheever, EIT, with Attar Engineering.

Mr. Emerson stated this item will be tabled until August 23, 2012 so the Board may have a site walk and a full Board representation.

Ken Wood, Attar Engineering, stated the project has received an approved field change and asked why the Board is now conducting a site walk. **Mr. Emerson** explained Board members disagree with the staff decision that the filed change was not a minor change, and request a site visit. **Mr. Wood** noted he and Mr. Pelletier would not be available for the August 23, 2012 meeting and requested it be tabled to the next meeting of the Board.

Mr. Kelly moved to table this item to the September 13, 2012 Planning Board meeting, preceded by a site walk.

Ms. Grinnell seconded

Motion carries unanimously by all members present

The site walk will begin at 5:00 p.m.

ITEM 4–Town Planner Items:

A. Town Council comments to recent proposed Title 16 Amendments. The Planning Board reviewed Councilor comments and made the following revisions:

- Remove Note in 16.3.2.13 Mixed-Use;
- Article XI amendment, re: Open space ...further limited or controlled by the Planning Board at the time of final approval... in the Article XI amendment;
- Remove proposed language in Article XI amendment re: BP zone open space in Article XI amendment;
- Article XI amendment, re: Recreation, reword as follows: Active recreation requiring permanent equipment and/or modification of the site may not be located within the wetland setback areas or contiguous reserved open space areas.
- Article XI amendment, re: use of term ‘commercial association’. Staff will define commercial association as a new definition in the code and submit for Council review.
- Chapter 16.2 Definitions, re: proposed definition of Open Space, reword as follows: Open space, Common means useable land within or related to a development, ~~exclusive of land dedicated as Reserved Open Space, or public open space~~ not individually owned which is dedicated....

Ms. Grinnell asked about administrative corrections to Title 16.10.9.2 Field Changes. Following discussion, Board members requested the following changes:

16.10.9.2 Field Changes

A. Minor. If at any time.... (continue as currently written)

B. Major. If at any time during the construction of the required improvements, it appears necessary or desirable to modify the required improvements, major plan changes due to unforeseen field

circumstances, such as relocations of rights-of-way, property boundaries, changes of grade by more than one percent (1%), or other modifications requiring Planning Board review per section 16.10.3.2, must be reviewed by the Planning Board.

B. Lewis Farm LLC Request for Street Name

Applicant requested a change of a previously approved street name, Farmers Wall Lane, to Coopers Way. Mr. DiMatteo stated Department Heads had signed off on the proposed new name.

Mr. Kelly moved to accept the new name of Coopers Way in the Lewis Farm subdivision

Ms. Driscoll seconded

Motion carries unanimously by all members present

C. Lewis Farm I petition

Phase I homeowners would like assurance that a performance guarantee be in place to include completion of Phase I road completion as part of the Phase 2 escrow. Board members concurred this should be combined with the Phase 2 approval review and approval.

D. General Updates.

Ms. Driscoll noted that the conditions placed on the recently approved pier for Frisbee Holdings LLC have not been completed, including fencing, handicapped parking and parking lot directions.

Mr. Emerson noted the business should not be able to operate from the pier if the conditions have not been met. **Mr. Di Matteo** stated the Code Enforcement Officer would enforce this.

Ms. Grinnell asked about the August 23, 2012 workshop on Contract Zoning. **Mr. Emerson** explained the workshop will include the Planning Board, Economic Development Committee, Comprehensive Plan Update Committee and others. The Planning Board would review a proposed ordinance and make changes and amendments to a proposal prior to acceptance. Mr. Emerson requested this item be placed on the August 23 agenda for Board discussion only in order to determine the Board's next steps, and postpone a public workshop at this time.

Mr. Emerson asked for a time-line on the York Hospital violation and approval, including the rationale for calling the movement of the chiller units a field change/minor plan amendment.

Mr. Kelly moved to adjourn

Ms. Driscoll seconded

Motion carries unanimously by all members present

The Kittery Planning Board meeting of August 9, 2012 adjourned at 8:55 p.m.

Submitted by Jan Fisk, Recorder – August 13, 2012

ATTACHMENT

From: "Deborah Belanger" <deb.belanger58@gmail.com>
Date: Aug 9, 2012 2:31 PM
Subject: Highpointe circle. End of the road. Beatrice development
To: <gmylroie@kitteryme.org>

I do not think I can make tonight's meeting, and my husband and I are very upset. We live at 4 Highpointe. The end of the road is a disaster and no one seems to be addressing it. We were told it would be made to look beautiful to match the economic level of our development, and it clearly is not. Mr. Sparkovitch (sp) seems to have a history of asking and promising one thing but then when no one in the town is paying attention, he does whatever he wants.

- 1) There was never supposed to be a gate put up. It was supposed to be boulders and bushes.
- 2) I do not believe that the house being built, for almost 2 years now, is the same as the house plan I looked at on file at the town hall, but it's hard to tell as I did not make a copy of the blueprint, but I hope someone checks that because the house is very unattractive and choppy.
- 3) The lack of a street sign and the unfinished pavement on the right of way is very tacky, cumbersome, and unsafe for. At the town meetings, we were told there would be a definite timeline for completion and then street signs would be put up, and now it seems that this project is going to be endless.

I believe all of these issues are important and relevant to our property values, which we were promised would be enhanced or unaffected by these houses being built. My husband is facing a job transfer which is forcing us to sell our house, and we will probably be listing it for sale within the month. I cannot believe that the value of our home will not be affected by the mess at the end of our street.

I would like to see someone in the town make sure the house follows the blueprint on file, and that the gate is removed and the permanent boulders and landscaping that was promised be put in place, and the right of way have an upcoming date for a pavement topcoat. And there needs to be a date set for a street sign that distinguishes the right of way from the mess of the Beatrice Way houses, which are not part of Highpointe Estates.. The addresses there, on the right of way, are Highpointe Circle, but there is very little to indicate that. And I certainly would be opposed to any of these new homes being included in Highpointe Circle.

The right of way addresses are part of Highpointe Estates, but it looks very confusing and is certainly unsafe, as far as emergency responders and vehicles finding it. It is my opinion that it demonstrates a lack of organization and follow through from Kittery town officials, and I hope this meeting will address these issues.

When we met for a talk with mr. Sparkovitch, he assured us that he would be making the area of development landscaped to our neighborhood standards. Nothing was said about an ugly gate. He told us that the Wods Road was only a trail and that no one ever used except to occasionally move firewood, and that he planned to discontinue using it eventually and put up landscaping in the form of boulders and bushes.

If there is to be another extension granted, then there needs to be conditions put in place, especially since there is absolutely no building and improvement going on there.

I have to say it is very difficult to keep a factual, historical, account that is real from these town meetings, as for some reason they are not recorded verbatim, but instead only the interpretation of the secretary who

writes up the minutes. I have found very relevant points that were discussed to have been left out and then overlooked. This is unbelievably frustrating, and I think we are feeling the effect of many forgotten discussions and conditions..

I wish I were able to attend the meeting, but family matters are keeping me out of town. If you have any questions or comments, please feel free to email me or call 439~3979.

Sincerely,

Deborah Belanger
